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10 Attorney for Plaintiff
11 BLUEPRINT STUDIOS TRENDS, INC.

12
13 BLUEPRINT STUDIOS TRENDS,
14 INC.,
15 a California corporation,

16 Plaintiff,

17 v.

18 THEONI, INC.
19 a California corporation, and
20 DOES 1–10, inclusive,

21 Defendants.

22 Case No.

23 **COMPLAINT FOR:**

- 24 **(1) PATENT INFRINGEMENT;**
(2) TRADE DRESS INFRINGEMENT
UNDER 15 U.S.C. 1125(a);
(3) UNFAIR COMPETITION UNDER
15 U.S.C. § 1125(a);
(4) COMMON LAW UNFAIR
COMPETITION; AND
(5) UNFAIR COMPETITION UNDER
STATE LAW.

25 **DEMAND FOR JURY TRIAL**

1 Plaintiff Blueprint Studios Trends, Inc. (“Blueprint”) complains and alleges as
 2 follows against Defendant Theoni Inc. (“Theoni”).

3 **THE PARTIES**

4 1. Plaintiff is a California corporation, having a principal place of
 5 business at 352 South Shaw Road, South San Francisco, California 94080.

6 2. Defendant Theoni is a California corporation, having a principal place
 7 of business at 938 Kaiser Road, Napa, California 94558.

8 3. The true names, identities and capacities, whether individual, associate,
 9 corporate or otherwise, of Defendants DOES 1 to 10, inclusive, and each of them
 10 (“the DOE Defendants”), are unknown to Blueprint at this time, who therefore sues
 11 the DOE Defendants by such fictitious names. When the true names and capacities
 12 or participation of the DOE Defendants are ascertained, Blueprint will amend this
 13 complaint to assert the true names, identities and capacities. Blueprint is informed
 14 and believes and thereon alleges that each of the DOE Defendants sued herein is
 15 responsible for the wrongful acts alleged herein, and is therefore liable to Blueprint
 16 in some manner for the events and happenings alleged in this complaint. Blueprint
 17 is informed and believes and thereon alleges that at all times herein mentioned, the
 18 DOE Defendants were and are doing business and/or residing in this District.

19 **NATURE OF THE ACTION**

20 4. This is a civil action against Defendants for infringement of United
 21 States Design Patent Number D651,018 S1 (“the ‘D018 Patent’ or “the Asserted
 22 Patent”) arising under the patent laws of the United States, Title 35 of the United
 23 States Code; for trade dress infringement and unfair competition in violation of the
 24 Lanham Act arising under 15 U.S.C. §§ 1125 *et. seq.*; for unfair competition arising
 25 under the common law of the State of California; and for violation of California’s
 26 statutory unfair competition law arising under Cal. Bus. & Prof. Code §§ 17200 and
 27 17500.

JURISDICTION AND VENUE

5. This Court has original subject matter jurisdiction of this action under
15 U.S.C. § 1121(a) (federal question), 28 U.S.C. § 1331 (federal question), and 28
U.S.C. § 1338(a) and (b) (any Act of Congress relating to patents and trademarks
and related unfair competition), and under the supplemental jurisdiction of this
Court, as embodied in 28 U.S.C. § 1337(a).

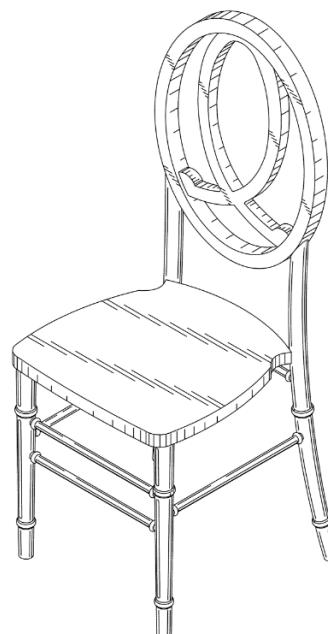
6. This Court has specific and general personal jurisdiction over
Defendants pursuant to due process and/or the California Long Arm Statute because
Defendant Theoni is incorporated in the forum, Defendants have committed and
continue to commit acts of infringement in violation of 35 U.S.C. §§ 271(a), (b), and
(c), and place infringing products into the stream of commerce, with the knowledge
or understanding that such products are sold in the State of California, including in
this judicial district. Moreover, Defendants' acts, including both unfair competition
and other violations of California law, caused and are causing injury to Blueprint
within this judicial district. On information and belief, Defendants derive
substantial revenue from the sale of infringing products within this judicial district,
expect their actions to have consequences within this judicial district, and derive
substantial revenue from interstate and international commerce, including within
this judicial district.

7. Venue is proper within this judicial district under 28 U.S.C. § 1331(b)
and 28 U.S.C. 1400 because Defendant Theoni resides within the district and a
substantial portion of the events giving rise to the claims for relief stated in this
Complaint arose in this judicial district. Specifically, Defendants have sold or
offered for sale infringing products in this district, and have committed other acts
complained of *infra* within this district. In addition, venue is proper because both
Theoni's and Blueprint's principal places of business are in this district and
Blueprint suffered and is suffering harm in this district.

BACKGROUND FACTS

2 8. Plaintiff Blueprint is a San Francisco-based company that provides
3 event planning and customized furnishing services. Blueprint also designs and
4 manufactures furniture tailored for individual tastes and various events. Blueprint
5 has won multiple awards and has been touted in the press for its innovative designs
6 and ability to meet customer needs. Customers in California, and throughout the
7 United States, have come to recognize Blueprint for its creativity and customer
8 service in the event planning and furnishing industry.

9 9. Blueprint considers its innovative furniture designs to be a core driver
10 of its business. Accordingly, Blueprint has taken steps to protect its innovative
11 designs, the chair design at the heart of the present dispute. To that end, on April 15,
12 2010, Blueprint filed U.S. Design Patent Application No. 29/359,832, which
13 matured into the ‘D018 Patent on December 27, 2011 (attached hereto as Exhibit
14 A). The ‘D018 Patent claims the ornamental design of a chair with an innovative
15 and unique backrest design. This design is appears in representative Figure 1 from
16 the ‘D018 Patent illustrated below:



‘D018 Patent, Fig. 1

1 10. Blueprint has owned, and continues to own all right, title, and interest
2 in and to the ‘D018 Patent, and the innovative and distinctive chair design described
3 therein. Blueprint manufactures, markets, and rents chairs to customers
4 incorporating that innovative and distinctive chair design, and has generated
5 considerable goodwill through the distinctive appearance of those chairs. For
6 example, Blueprint markets and rents chairs incorporating the design claimed by the
7 ‘D018 Patent under the brand name “Infinity.” Blueprint’s marks its Infinity chairs
8 as being protected by a patent as illustrated in **Exhibit B** attached hereto.

9 11. Through several years renting Infinity chairs to consumers and
10 engaging in other related commercial activities in California and throughout the
11 United States, consumers have come to associate the distinctive design incorporated
12 in the Infinity chairs, together with the brand “Infinity,” with Blueprint and
13 Blueprint’s innovative products and services.

14 12. Defendant Theoni was founded in March of 2015 and offers a
15 collection of décor and tabletop accessories, including votives, lanterns,
16 candelabra, napkin rings, farm tables, and dining chairs. Theoni offers pieces from
17 its collection for sale or rental for events.

18 13. On information and belief, Theoni’s products are available for
19 purchase, rental, and/or use throughout the United States, including in the State of
20 California.

21 14. Theoni, through its online catalog, has offered, and continues to offer
22 for sale or rental, a “Portofino” style chair that incorporates Blueprint’s ornamental
23 design claimed by the ‘D018 Patent. Theoni’s catalog describes the “Portofino”
24 chair as “[a] wooden chair with a round back and distinctive infinity port, the
25 Portofino chair is graceful and pairs well with bright colors and unforgettable
26 landscapes” (the “Knock-Off Portofino chair”). (*See* Excerpts from Theoni Catalog,
27 attached hereto as **Exhibit C.**) The Portofino chair is “[a]vailable in white,

1 whitewash, walnut, black, silver and gold,” with “[i]nterchangeable seat pads
2 available in white, ivory, silver, black and gold.” (*Id.*)

3 15. The striking similarity between Theoni's Knock-Off Portofino chairs
4 and the design claimed by the 'D018 Patent is clearly illustrated in Table 1 below.
5 As illustrated, the Theoni Knock-Off Portofino chair appears to be an exact replica
6 of the design claimed in the 'D018 Patent.

Table 1: Comparison of ‘018 Patent with Infringing Chairs

The image is a side-by-side comparison of two chairs. On the left, under the heading 'D018 Patent Claims', is a black and white line drawing of a chair. This chair features a backrest composed of three concentric circles and a seat with vertical hatching. On the right, under the heading 'Knock-Off Portofino Chair:', is a color photograph of a similar chair. This second chair has a silver-colored frame with a backrest consisting of two concentric circles. The seat is a solid light gray color. Both chairs have four legs and a horizontal crossbar at the base.

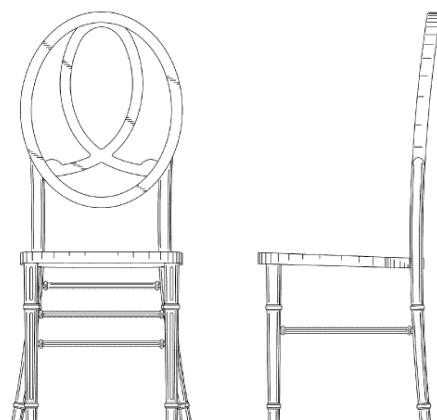


FIG. 2

FIG. 3

16. An ordinary observer will perceive the overall appearance of the
17 designs of the chair claimed by the 'D018 Patent and the corresponding design of
18 the Knock-Off Portofino chairs to be substantially the same.

19. On information and belief, Theoni intentionally copied the designs
20 covered by the 'D018 Patent in its Knock-Off Portofino chairs.

21. On Information and belief, Theoni knew that the designs incorporated
22 in its Knock-Off Portofino chairs were protected by the 'D018 Patent when Theoni
23 had made, made, sold, offered for sale, rented, or used its Knock-Off Portofino
24 chairs.

25. On March 8, 2017, Blueprint, through its attorneys, sent Theoni a letter
26 notifying Theoni that the design incorporated in the Knock-Off Portofino chairs was
27 protected by Blueprint's 'D018 Patent and demanding that Theoni immediately
cease and desist from having made or using the design covered by the claim of the
'018 Patent ("the Cease and Desist Letter"). A copy of the Cease and Desist Letter
is attached hereto as **Exhibit D**.

1 20. Although Theoni's counsel acknowledged receipt of the cease and
2 desist letter through multiple communications with Blueprint's attorneys, Theoni
3 continued, and still continues to have made, make, sell, offer for sale, rent, or use
4 the Knock-Off Portofino chairs, at least through its website and online catalog.

5 21. Theoni's marketing through its online catalog of Knock-Off Portofino
6 chairs incorporating a design that replicates the claims of Blueprint's patent and
7 offered for sale or rental using the name "infinity" is likely to cause confusion
8 among consumers as to the source of the Knock-Off Portofino chairs.

9 22. On information and belief, Theoni has marketed and continues to
10 market its Knock-Off Portofino chairs using the name “infinity” with the intention
11 of causing confusion amongst consumers as to the source of the Knock-Off
12 Portofino chairs, as well as to indicate an association with or endorsement by
13 Blueprint when no such association or endorsement exists.

14 23. On information and belief, consumers have actually been confused as
15 to the origin of the Knock-Off Portofino chairs because the chairs incorporate a
16 design that is nearly identical to Blueprint's patent protected Infinity chairs and
17 because the Knock-Off Portofino chairs are marketed using the name "infinity."

18 24. On information and belief, Blueprint has lost sales of its patent
19 protected Infinity chairs because consumers have decided, instead, to purchase or
20 rent the Knock-Off Portofino chairs.

FIRST CAUSE OF ACTION

Infringement of Design Patent 'D018 Patent

23 25. Blueprint incorporates and realleges Paragraphs 1 through 24 of this
24 Complaint.

25 26. Under 35 U.S.C. § 271(a), Defendants have infringed and continue to
26 infringe, literally or under the doctrine of equivalents, the 'D018 Patent by making,
27 using, selling, and/or offering to sell in the United States, and/or importing into the

1 United States the Knock-Off Portofino chair identified in this Complaint, which
2 Knock-Off Portofino chair embodies the design covered by the '018 Patent.

3 27. Moreover, Defendants have infringed and continue to infringe the
4 'D018 Patent indirectly, under 35 U.S.C. §§ 271(b) and (c), by inducing others to
5 infringe the 'D018 Patent, and by committing acts that constitute contributory
6 infringement of the 'D018 Patent.

7 28. On information and belief, Defendants have gained profits by virtue of
8 their infringement of the 'D018 Patent.

9 29. On information and belief, Blueprint has sustained damages as a direct
10 and proximate result of Defendants' infringement of the 'D018 Patent, and, as such,
11 Blueprint is entitled to damages pursuant to 35 U.S.C. §§ 284 and/or 289.

12 30. Moreover, Blueprint is informed and believes that Defendants'
13 infringement of the 'D018 Patent is and has been willful. On information and belief,
14 Defendants have acted and continue to act with objective recklessness by
15 proceeding despite an objectively high likelihood that their actions constitute
16 infringement of Blueprint's valid patent, and Defendants are aware of Blueprint's
17 'D018 Patent, and know of the high likelihood that the claim of the 'D018 Patent
18 covers Defendants' products.

19 31. This is an exceptional case warranting an award of treble damages to
20 Blueprint under 35 U.S.C. § 284, and an award of attorneys' fees under 35 U.S.C. §
21 285.

22 32. On information and belief, Blueprint will suffer and is suffering
23 irreparable harm from Defendants' infringement of the 'D018 Patent. Blueprint has
24 no adequate remedy at law and is, under 35 U.S.C. § 283, entitled to an injunction
25 against Defendants' continuing infringement of the 'D018 Patent. Unless enjoined,
26 Defendants will continue their infringing conduct.

27

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SECOND CAUSE OF ACTION

Trade Dress Infringement, 15 U.S.C. §1125(a)(3)

33. Blueprint incorporates and realleges Paragraphs 1 through 32 of this
4 Complaint.

5 34. Blueprint's trade dress consists of the following elements as actually
6 used on the Infinty products: a backrest incorporating a curved member disposed
7 within an oval-shaped member, as illustrated in the claim of the 'D018 Patent.
8 These elements have consistently been marketed under the trade name "Infinity"
9 and have generated goodwill and consumer recognition accruing to Blueprint's
10 business.

11 35. Blueprint's trade dress has acquired a secondary meaning. Blueprint
12 has been marketing, selling, or renting the Infinity chair with its distinctive trade
13 dress since December, 2011.

14 36. Blueprint is informed and believes, and thereon alleges, that Theoni has
15 been designing, making, having made, marketing, offering for sale, selling, and
16 renting products that incorporate Blueprint's Infinity trade dress.

17 37. Theoni is not now, and never has been, authorized by Blueprint to use
18 Infinity's trade dress or any confusingly similar trade dress in connection with the
19 marketing and/or sale of Theoni's infringing Knock-Off Portofino chair.

20 38. Theoni's marketing, renting, and sale of infringing Knock-Off
21 Portofino chair is likely to cause confusion, mistake, and/or deception among
22 consumers as to the source, quality, and nature of Blueprint's Infinity chairs.

23 39. Blueprint has suffered actual damages from Theoni's conduct in an
24 amount to be proven at trial.

25 40. Theoni has received wrongful gains from its conduct in an amount to
26 be proven at trial.

27 41. Blueprint is informed and believes, and thereon alleges that, unless
28 restrained by the Court, Theoni will continue to infringe Blueprint's Infinity trade

1 dress, thus engendering a multiplicity of judicial proceedings, and that pecuniary
2 compensation will not afford Blueprint adequate relief for the damage to its trade
3 dress in the public perception. Further, Blueprint is informed and believes, and
4 thereon alleges, that in the absence of injunctive relief, customers are likely to
5 continue being mistaken or deceived as to the true source, origin, sponsorship, and
6 affiliation of Theoni's goods.

7 42. Blueprint is informed and believes, and thereon alleges, that Theoni's
8 acts were committed, and continue to be committed, with actual notice of
9 Blueprint's exclusive rights and with intent to cause confusion, to cause mistake,
10 and/or to deceive, and to cause injury to the reputation and goodwill associated with
11 Blueprint and its Infinity chairs. Pursuant to 15 U.S.C. §1117, Blueprint is therefore
12 entitled to recover three times its actual damages or three times Theoni's profits,
13 whichever is greater, together with Blueprint's attorneys' fees. In addition, pursuant
14 to 15 U.S.C. §1118, Blueprint is entitled to an order requiring destruction of all
15 infringing products and promotional materials in Theoni's possession.

THIRD CAUSE OF ACTION

Unfair Competition Under 15 U.S.C. § 1125(a)

18 43. Blueprint incorporates and realleges Paragraphs 1 through 42 of this
19 Complaint.

20 44. The acts of Theoni complained of above are likely to cause confusion,
21 or to cause mistake, or to deceive as to the affiliation, connection, or association as
22 to the origin, sponsorship, or approval of Theoni's and Blueprint's goods.
23 Moreover, the acts of Theoni complained of above misrepresent the nature,
24 characteristics, or qualities of Theoni's and Blueprint's goods. These acts thus
25 constitute false designation of origin and/or affiliation, false or misleading
26 description of fact, or false or misleading representation of fact, in violation of 15
27 U.S.C. §1125(a).

1 45. Blueprint is informed and believes that Theoni's acts include, for
2 example, offering Theoni's Knock-Off Portofino chairs for sale or rent and
3 piggybacking off Blueprint's goodwill, not only by copying the distinctive designs
4 and appearances of Blueprint's Infinity chairs, but also by retaining the Blueprint's
5 distinctive "infinity" brand to identify the design incorporated in the backrest of the
6 Knock-Off Portofino chairs.

7 46. Blueprint has suffered actual damages from Theoni's conduct in an
8 amount to be proven at trial.

9 47. Theoni has received wrongful gains from its conduct in an amount to
10 be proven at trial.

11 48. Blueprint is informed and believes, and thereon alleges that, unless
12 restrained by the Court, Theoni will continue to designate falsely the origin of its
13 goods, causing irreparable damage to Blueprint and engendering a multiplicity of
14 lawsuits. Pecuniary compensation will not afford Blueprint adequate relief for its
15 resulting damages. Further, Blueprint is informed and believes, and thereon alleges,
16 that in the absence of injunctive relief, customers are likely to continue being
17 mistaken or deceived as to the true source, origin, sponsorship, and affiliation of
18 Theoni's goods.

19 49. Blueprint is informed and believes, and thereon alleges, that Theoni's
20 acts were committed, and continue to be committed, with actual notice of
21 Blueprint's exclusive rights and with intent to cause confusion, to cause mistake,
22 and/or to deceive, and to cause injury to the reputation and goodwill associated with
23 Blueprint and its Infinity chairs. Pursuant to 15 U.S.C. §1117, Blueprint is therefore
24 entitled to recover three times its actual damages or three times Theoni's profits,
25 whichever is greater, together with Blueprint's attorneys' fees. In addition, pursuant
26 to 15 U.S.C. §1118, Blueprint is entitled to an order requiring destruction of all
27 infringing products and promotional materials in Theoni's possession.

28

FOURTH CAUSE OF ACTION**Common Law Unfair Competition**

3 50. Blueprint incorporates and realleges Paragraphs 1 through 49 of this
 4 Complaint.

5 51. The acts of Theoni complained of above constitute unfair competition
 6 under the common law of the State of California. Blueprint expended significant
 7 time and resources in the goodwill associated with its Infinity chairs. On
 8 information and belief, Theoni copied those products, including their distinctive
 9 designs, and is trading off that goodwill at relatively little to no engineering or
 10 design expense and without Blueprint's authorization. Blueprint has suffered harm
 11 as a result—including, for example, lost sales and customer confusion.

12 52. Blueprint is informed and believes that further examples of Theoni's
 13 acts of unfair competition include sales of confusingly similar Theoni products.

14 53. Blueprint has suffered actual damages from Theoni's conduct in an
 15 amount to be proven at trial.

16 54. Theoni has received wrongful gains from its conduct in an amount to
 17 be proven at trial.

18 55. Theoni's acts complained of above were committed with fraud, malice,
 19 and oppression as those terms are defined in Cal. Civ. Code § 3294. Theoni's
 20 actions were intended to cause harm to Blueprint, and Theoni carried on its conduct
 21 with a willful and conscious disregard for Blueprint's rights. Theoni intentionally
 22 misrepresented, deceived, and/or concealed its conduct and Blueprint's relationship
 23 with the Infinity chair, thereby depriving Blueprint of its legal rights and causing
 24 Blueprint injury.

FIFTH CAUSE OF ACTION**Statutory Unfair Competition Under Cal. Bus. & Prof. Code §§ 17200 & 17500**

25 56. Blueprint incorporates and realleges Paragraphs 1 through 55 of this
 26 Complaint.

1 57. Theoni's acts complained of above constitute unlawful, unfair, or
2 fraudulent business practices, and deceptive, untrue, or misleading advertising in
3 violation of California statutory law, including violation of Cal. Bus. & Prof. Code
4 §§ 17200 and 17500, all to Blueprint's injury. Moreover, the above-described acts
5 constitute unfair competition under 15 U.S.C. § 1125(a), and are therefore unlawful
6 acts in violation of Cal. Bus. & Prof. Code §§ 17200 and 17500.

7 58. As a direct and proximate result of Theoni's acts, Theoni has received
8 profits from, and will continue to profit from, wrongfully trading on Blueprint's
9 goodwill.

10 59. Blueprint is entitled to an injunction restraining Theoni and its officers,
11 against, and employees, and all persons acting in concert or participation with them,
12 from further engaging in any such acts of unfair competition as alleged above.
13 Blueprint has no adequate remedy at law for Theoni's continuing violation of
14 Blueprint's rights.

15 60. Blueprint is further entitled to recover from Theoni the damages,
16 including attorneys' fees, it has sustained and will sustain, and any gains, profits,
17 and advantages obtained by Theoni as a result of Theoni's acts of unfair competition
18 alleged above. At present, Blueprint cannot fully ascertain the amount of such
19 damages, gains, profits, and advantages. Theoni should be required to fully restore
20 to Blueprint any and all profits earned as a result of Theoni's unlawful and
21 fraudulent actions, or to provide Blueprint with any other restitutionary relief as the
22 Court deems appropriate.

23 61. Blueprint is informed and believes and on that basis alleges that the
24 alleged acts of Theoni were willful and malicious, entitling Blueprint to punitive
25 damages.

26
27
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PRAYER

WHEREFORE, Blueprint prays:

(a) For a judgment that Defendants have infringed the claim of Blueprint's 'D018 Patent and Blueprint's Infinity trade dress;

(b) For an order and judgment preliminarily and permanently enjoining Defendants and their officers, directors, agents, servants, employees, affiliates, attorneys, and all others acting in privity, active concert, or participation with any of them, and their parents, subsidiaries, divisions, successors and assigns, who receive actual notice of the judgment by personal service or otherwise, from further acts of infringement of Blueprint's 'D018 Patent and Blueprint's Infinity trade dress;

(c) That Defendants be directed to file with this court, within *thirty* days after entry of any injunction in this case, a written statement, under oath, setting forth in detail the manner in which Defendants have complied with the injunction;

(d) For a judgment awarding Blueprint all damages, in an as yet undetermined amount, adequate to compensate for Defendants' infringement of Blueprint's 'D018 Patent, and in no event less than a reasonable royalty for Defendants' acts of infringement, including all pre-judgment and post-judgment interest at the maximum rate permitted by law;

(e) For a judgment awarding Blueprint all damages, including treble damages, based on any infringement found to be willful, pursuant to 35 U.S.C. § 284, together with prejudgment interest;

(f) For a judgment that Defendants and their officers, agents, distributors, employees, attorneys, subsidiaries, assigns, or related companies, and those in active concert or participation with any of them, who receive actual notice of the judgment by personal service or otherwise, be permanently enjoined from using, offering for sale, or employing, directly or indirectly, any device, product, or

1 the like, that is confusingly similar to, or is likely to confuse or deceive as to the
2 affiliation, connection, sponsorship, or association of, the chairs, products, or
3 commercial activities of Defendants with Plaintiff, Plaintiff's Infinity chairs, or with
4 Plaintiff's commercial activities;

5 (g) That an accounting be directed to determine Defendants' profits
6 resulting from their false designation of origin and affiliation and unfair
7 competition, which are the subject of this suit, and that such profits be increased
8 under 15 U.S.C. §1117;

9 (h) That Blueprint recover its damages, in an as yet undetermined
10 amount, resulting from the above-alleged false designation of origin and unfair
11 competition of Defendants;

12 (i) That Blueprint be awarded punitive damages in an amount to be
13 determined;

14 (j) For costs of suit and reasonable attorneys' fees; and

15 (k) For any other remedy to which Blueprint may be entitled under
16 the law, and any other further relief as the Court may deem appropriate.

17

18 **DEMAND FOR JURY TRIAL**

19 Blueprint requests a trial by jury on all issues so triable in this action.

20

21 Respectfully submitted,

22

23 Dated: August 30, 2017

24

25 SHEPPARD, MULLIN, RICHTER
& HAMPTON LLP

26 By /s/ Jesse A. Salen

27

28 Attorney for Plaintiff
BLUEPRINT STUDIOS TRENDS, INC.